

Excerpts
Planning Commission Minutes
October 10, 2001

Application No. UP-583-01, Iyobosa Associates, Inc: Request for a Special Use Permit, pursuant to Sections 24.1-283(a) and 24.1-283(e) of the York County Zoning Ordinance, to authorize the operation of a limousine service as a home occupation at 100 Douglas Drive.

Mr. Tim Cross presented a summary of the staff memorandum to the Commission dated October 2, 2001. He noted the staff recommendation of denial but the inclusion of a resolution to recommend approval, should that be the Commission's desire.

Mr. Semmes inquired about access to the applicant's carport, and Mr. Cross said access presumably would be through the side yard facing Merrimac Trail. He added that a condition of approval would require the applicant to install an all-weather, hard-surface driveway, and another condition would prevent direct access to Route 143. There is also a provision that the carport would be enclosed, he added.

Mr. Shepperd asked how the County became aware of the applicant's violations in March 2000; Mr. Cross said the County staff observed some violations and reported them to the appropriate zoning and code enforcement personnel.

Ms. White noted that the application was for four limousines to be parked at the residence but the conditions imposed by the resolution of approval would limit the number to two; Mr. Cross said that is correct and explained that when two non-resident employees' automobiles are parked on the premises along with four limousines, the number of vehicles on the property would exceed the maximum of five parked vehicles allowed for a home occupation. Therefore, the staff proposes to limit the number of allowed limousines to two.

The Chair opened the public hearing.

Mr. Joseph Osamwonyi, 100 Douglas Drive, spoke in behalf of approval of his application. [A complete transcript of Mr. Osamwonyi's remarks to the Commission is attached to the Minutes of Record.]

Mr. Osamwonyi indicated that he was forced out of business by the County in August, 2001, and has subsequently filed the subject application for a special use permit to garage up to four limousines at his residence as a home occupation. Mr. Osamwonyi detailed his disagreements with the County from 1996, when he began garaging his business limousines at his residence, until August 27, 2001 when, he asserted, he was forced out of business by a court order to remove the limousines from his residence property. He also cited certain sections of the County Code that he believed would support approval

of his application: Sections 24.1-273(d) and 273(f); 24.1-280; 24.1-281; 24.1-293(a), 293(b)(2) and (b)(3), and 24.1-283(e).

Mr. Osamwonyi said he is attempting to re-establish the business administration from his office at 295 McLaws Circle, Williamsburg, housing the limousines at his residence at 100 Douglas Drive, and depending upon resident and non-resident drivers for the limousine service.

Mr. Osamwonyi requested approval because he had been harmed by the actions of some County officials during the past 19 months; he has community support from Carver Gardens residents; he received no complaints from neighbors and community members while he operated the business; the surrounding community is heavily commercial; more noise is generated by trains that regularly pass through the area than would be generated by his limousine service; and he paid property taxes on the limousines from 1996 to 2001. He indicated that the zoning to conduct the limousine business from his home was approved in 1996, whereupon he applied for and received a business license to conduct such business, but approval was rescinded in 2001 and he could not obtain County approval to renew the business license. He objected to the staff recommendation for denial, and further indicated that the County would be making a terrible mistake by denying his application and he added that denial would violate his constitutional and federal civil rights.

Mr. Simasek inquired about the business-related taxes paid by Mr. Osamwonyi, and the applicant explained that he pays York County property taxes on the limousines and City of Williamsburg business taxes for his office.

Ms. Eleanor Osamwonyi, 100 Douglas Drive, spoke in favor of approval of her husband's application. She said the couple work hard not to burden the state or the county. York County is steeped in tradition, she said, adding that she and her husband had encountered various types of negative attitudes since moving from another state and establishing their business in York County. They believe the Constitution should be a living document, but Ms. Osamwonyi thought their rights to free enterprise had been denied and they are being used as an example because they have challenged the system. She said they pay their share of taxes and have been licensed to operate their limousine business by the County. She said their neighbors have no problems with their operation, and some believe they have raised the standards of the community.

Mr. Joseph Edwin, 103 Douglas Drive, spoke in behalf of the applicants saying they are good neighbors, make no noise, are trying very hard to make their business a success and need our help.

There being no others who indicated a desire to speak, the Chair closed the public hearing.

Mr. Shepperd indicated he was affected by a petition submitted with the application in which over 100 neighbors of the applicants had encouraged approval of the use permit, and also recognized that the

applicants are trying to start over again. He asked what kind of precedent the County would be setting by approving their application.

Mr. Carter noted that a use permit is not precedent-setting because each is evaluated based on its individual merits and characteristics. He added that many of the commercial areas cited by the applicant are located on Merrimac Trail not in York but in Williamsburg or James City County. The concern for York County is that this type of business could contribute to a trend to convert homes in the Carver Gardens neighborhood into business operations, as is happening farther north on Merrimac Trail in the direction of Williamsburg. Another concern is that, while Mr. Osamwonyi is requesting limousine parking at his home, another type of application might request a home plumbing business that could have three or four commercial vehicles, he added.

Mr. Shepperd said that since the neighbors have no problem with the request, and considering the fact there is an active railroad track in the area, he would have no problem supporting approval.

Mr. Simasek asked why the request would be classified as a business since Mr. Osamwonyi conducts the administrative portions of his business at another location. Mr. Barnett indicated that nowhere in the Zoning Ordinance is there a category of home occupation that provides for offsite storage of business-related equipment, particularly for a business that operates in an adjacent jurisdiction.

Discussion continued about the limitations imposed on using a home carport as a storage area for business vehicles, ferrying the limousines between the home and the McLaws Circle address by non-resident employees, and the increased activity levels in the neighborhood because of those activities.

Mr. Heavner noted that the applicant had indicated in his statement that the proposed conditions would not be satisfactory to him, in any case, because they would limit the number of limousines and the hours of operation in such a manner as to make the business unsustainable.

Mr. Osamwonyi indicated the staff is trying to put him out of business by requiring that his business close at 8:00 p.m. He said he sometimes arrives home in his personal automobile later than midnight from his job as an investigator and does not disturb anyone. He added that the trains make far more noise than do any of his operations.

Mr. Shepperd suggested tabling the application for the staff to study it further.

Mr. Hendricks commended the applicant for a lucid, articulate and well-researched argument. He was convinced, however, that the applicant wanted to operate a commercial business that would be better suited to a commercial district. The issue, he said, is land use, and this business is inappropriate for a high-density residential district. He did not see any need to table the application or return it to staff for more study.

Mr. Beil agreed with Mr. Hendricks.

Mr. Simasek sympathized with the applicant's frustration. He suggested the County might consider a zoning change in the area, but did not think the concept of a special use permit was ever intended to permit storing or operating limousines from a neighborhood. He supported the staff recommendation.

Ms. White said she had observed limousines parked in an unorganized, unsightly manner in the front yard of the property. She felt a covered garage would be more appropriate if the business was allowed at the home. However, although their neighbors support the applicants, the neighbors have worked hard for many years to keep the neighborhood very nice, for which they are to be commended. She wondered if they had considered how a business of this type might affect their property values.

Mr. Semmes concurred that the real issues are land use and scale. One limousine, he believed, would be unobtrusive, but four "would cross the line into a commercial venture." The Code is clear as to what a home occupation is, he added, and the operation of an office could be an appropriate home occupation, but parking commercial vehicles in relatively large numbers is not. He applauded Mr. Osamwonyi's entrepreneurship and hoped Mr. Osamwonyi could find a suitable location nearby in which to garage his business vehicles.

Mr. Shepperd opined that land use is not "one size fits all" and still did not object because the neighboring homeowners expressed no objections.

Mr. Hendricks moved to adopt Resolution PC01-30 to recommend approval. On roll call vote, the motion failed by a vote of 2:5 (Yes: Heavner, Shepperd. No: Simasek, Beil, White, Hendricks, Semmes).

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